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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS-FV-11-0070 FV11-927-3 FIR]

Pears Grown in Oregon and Washington; Assessment Rate

Decrease for Processed Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as a final rule.

SUMMARY: The Department of Agriculture is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Processed Pear Committee (Committee) for the 2011-2012 and subsequent fiscal periods from \$8.41 to \$7.73 per ton of summer/fall processed pears handled. The Committee locally administers the marketing order which regulates the handling of processed pears grown in Oregon and Washington. The Committee recommended the assessment rate decrease because the summer/fall processed pear promotion budget for the 2011-2012 fiscal period was reduced.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Teresa.Hutchinson@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following website:

<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>;
or by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Under the order, Oregon-Washington processed pear handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable processed pears for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on July 1, and ends on June 30.

In an interim rule published in the **Federal Register** on August 30, 2011, and effective on August 31, 2011, (76 FR 53811, Doc. No. AMS-FV-11-0070, FV11-927-3 IR), § 927.237 was amended by decreasing the assessment rate established for the Committee for the 2011-2012 and subsequent fiscal periods from \$8.41 to \$7.73 per ton for summer/fall processed pears handled. The Committee recommended the assessment rate decrease because the summer/fall processed pear promotion budget for the 2011-2012 fiscal period was reduced.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural

Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,500 producers of processed pears in the regulated production area and approximately 51 handlers of processed pears subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000.

According to the Noncitrus Fruits and Nuts 2010 Preliminary Summary issued in January 2011 by the National Agricultural Statistics Service, the total farm-gate value of summer/fall processed pears grown in Oregon and Washington for 2010 was \$76,427,000. Based on the number

of processed pear producers in the Oregon and Washington, the average gross revenue for each producer can be estimated at approximately \$50,951. Furthermore, based on Committee records, the Committee has estimated that each of the Northwest pear handlers currently ship less than \$7,000,000 worth of processed pears on an annual basis. From this information, it is concluded that the majority of producers and handlers of Oregon and Washington processed pears may be classified as small entities.

In addition, there are five processing plants in the production area, with one in Oregon and four in Washington. All five processors would be considered large entities under the SBA's definition of small businesses.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2011-2012 and subsequent fiscal periods from \$8.41 to \$7.73 per ton for summer/fall processed pears handled. The Committee unanimously recommended 2011-2012 expenditures of \$926,933 and an assessment rate of \$7.73 per ton for summer/fall processed pears. The assessment rate of \$7.73 is \$0.78 lower than the previous rate. The Committee recommended

the assessment rate decrease because the summer/fall processed pear promotion budget was reduced.

The quantity of assessable processed pears for the 2011-2012 fiscal period is estimated at 120,000 tons. Thus, the \$7.73 rate should provide \$927,600 in assessment income. Income derived from summer/fall processed pear handler assessments, interest and other income will be adequate to cover the budgeted expenses.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In accordance with the Paperwork Reduction Act of 1991 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Generic Fruit Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Oregon-Washington processed pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the Oregon-Washington pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 2, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

Comments on the interim rule were required to be received on or before October 31, 2011. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-11-0070-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (76 FR 53811, August 30, 2011) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

PART 927 - PEARS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim rule amending 7 CFR part 927 which was published at 76 FR 53811 on August 30, 2011, is adopted as a final rule, without change.

Dated: April 5, 2012

David R. Shipman
Acting Administrator
Agricultural Marketing Service

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